RAMON NAVARRO LUPERCIO
NAME

CDC#: V05419
PRISON NUMBER

CALIPATRIA STATE PRISON
7018 BLAIR ROAD
CURRENT ADDRESS OR PLACE OF CONFINEMENT

CALIPATRIA, CA 92233
CITY, STATE, ZIP CODE

2254 ✓ 1983 ___
FILING FEE PAID
Yes ✓ No ___
IFP MOTION FILED
Yes ___ No ✓
COPIES SENT TO
Court ✓ ProSe ___

FILED
2007 DEC 13 PM 4:29
CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY RM DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAMON NAVARRO LUPERCIO ,
(FULL NAME OF PETITIONER)

PETITIONER

v.

SYLVIA GONZALEZ, WARDEN CALIPATRIA ,
(NAME OF WARDEN, SUPERINTENDENT, JAILOR, OR AUTHORIZED PERSON HAVING CUSTODY OF PETITIONER [E.G., DIRECTOR OF THE CALIFORNIA DEPARTMENT OF CORRECTIONS])

RESPONDENT

and

The Attorney General of the State of California, Additional Respondent.

Civil No '07 CV 2338 WQH PCL
(TO BE FILLED IN BY CLERK OF U.S. DISTRICT COURT)

PETITION FOR WRIT OF HABEAS CORPUS

UNDER 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY

1. Name and location of the court that entered the judgment of conviction under attack:
   TULARE COUNTY SUPERIOR COURT, 425 Easr Kern, Tulare, California 93274

2. Date of judgment of conviction: April 25, 2003

3. Trial court case number of the judgment of conviction being challenged:
   Case Number 02-9456

4. Length of sentence: 32 Years to life

5. Sentence start date and projected release date: August 13, 2003

6. Offense(s) for which you were convicted or pleaded guilty (all counts):
California Penal Code Sections 187, 664, 12022.53

7. What was your plea? (CHECK ONE)
   (a) Not guilty ☒
   (b) Guilty ☐
   (c) Nolo contendere ☐

8. If you pleaded not guilty, what kind of trial did you have? (CHECK ONE)
   (a) Jury ☒
   (b) Judge only ☐

9. Did you testify at the trial?
☒ Yes ☐ No

DIRECT APPEAL

10. Did you appeal from the judgment of conviction in the **California Court of Appeal**?
☒ Yes ☐ No

11. If you appealed in the **California Court of Appeal**, answer the following:
   (a) Result: AFFIRMED
   (b) Date of result (if known): NOVEMBER 23, 2004
   (c) Case number and citation (if known): F043762
   (d) Names of Judges participating in case (if known):
   (e) Grounds raised on direct appeal:
   INEFFECTIVE ASSISTANCE OF COUNSEL

12. If you sought further direct review of the decision on appeal by the **California Supreme Court** (e.g., a Petition for Review), please answer the following:
   (a) Result: PETITION DENIED
   (b) Date of result (if known): FEBRUARY 2, 2005
   (c) Case number and citation (if known):
   S130165
   (d) Grounds raised:
   INEFFECTIVE ASSISTANCE OF COUNSEL

13. If you filed a petition for certiorari in the **United States Supreme Court**, please answer the following with respect to that petition:
   (a) Result:
   (b) Date of result (if known):
   (c) Case number and citation (if known):
   (d) Grounds raised:

COLLATERAL REVIEW IN STATE COURT

14. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Superior Court**?
☐ Yes ☒ No

15. If your answer to #14 was "Yes," give the following information:
   (a) **California Superior Court** Case Number (if known):
   (b) Nature of proceeding:
   (c) Grounds raised:
   (d) Did you receive an evidentiary hearing on your petition, application or motion?
   Yes No
   (e) Result:
   (f) Date of result (if known):

16. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Court of Appeal**?
☐ Yes ☒ No

17. If your answer to #16 was "Yes," give the following information:

(a) **California Court of Appeal** Case Number (if known):

(b) Nature of proceeding:

(c) Names of Judges participating in case (if known)

(d) Grounds raised:

(e) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☐ No

(f) Result:

(g) Date of result (if known):

18. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions (e.g., a Petition for Writ of Habeas Corpus) with respect to this judgment in the **California Supreme Court**?
☒ Yes ☐ No

19. If your answer to #18 was "Yes," give the following information:

(a) **California Supreme Court** Case Number (if known): S139071

(b) Nature of proceeding: PETITION FOR WRIT OF HABEAS CORPUS

(c) Grounds raised:
INEFFECTIVE ASSISTANCE OF COUNSEL; DECLARATIONS FROM NEW WITNESSES REGARDING THE FACTUAL INNOCENCE OF PETITIONER

(d) Did you receive an evidentiary hearing on your petition, application or motion?
☐ Yes ☒ No

(e) Result: Denied

(f) Date of result (if known): December 13,2006

20. If you did ***not*** file a petition, application or motion (e.g., a Petition for Review or a Petition for Writ of Habeas Corpus) with the **California Supreme Court**, containing the grounds raised in this federal Petition, explain briefly why you did not:

COLLATERAL REVIEW IN FEDERAL COURT

21. Is this your **first** federal petition for writ of habeas corpus challenging this conviction?

☒ Yes ☐ No (IF "YES" SKIP TO #22)

(a) If no, in what federal court was the prior action filed?

(i) What was the prior case number?

(ii) Was the prior action (CHECK ONE):

Denied on the merits?

Dismissed for procedural reasons?

(iii) Date of decision:

(b) Were any of the issues in this current petition also raised in the prior federal petition?

Yes No

(c) If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this second or successive petition?

Yes No

CAUTION:

- **Exhaustion of State Court Remedies:** In order to proceed in federal court you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. This means that even if you have exhausted some grounds by raising them before the California Supreme Court, you must first present ***all*** other grounds to the California Supreme Court before raising them in your federal Petition.
- **Single Petition:** If you fail to set forth all grounds in this Petition challenging a specific judgment, you may be barred from presenting additional grounds challenging the same judgment at a later date.
- **Factual Specificity:** You must state facts, not conclusions, in support of your grounds. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do. A rule of thumb to follow is — state who did exactly what to violate your federal constitutional rights at what time or place.

GROUNDS FOR RELIEF

22. **State *concisely* every ground on which you claim that you are being held in violation of the constitution, law or treaties of the United States. Summarize *briefly* the facts supporting each ground.** (e.g. what happened during the state proceedings that you contend resulted in a violation of the constitution, law or treaties of the United States.) If necessary, you may attach pages stating additional grounds and/or facts supporting each ground.

(a) GROUND ONE:

Petitioner was denied his right to effective assistance of counsel at trial.

Supporting FACTS:

Defense counsel suffered from physical illness and was heavily medicated and dazed during the initial trial such that he fell asleep on numerous occasions during the proceedings and lacked the ability to concentrate and focus during the trial. Defense counsel's physical and mental incapacity was such that he urinated and defecated on himself during trial. Defense counsel's investigator declared that counsel was too ill to effectively stage a defense. Shortly after trial, counsel passed away due to this illness.

Counsel's incapacity was such that he failed to cross examine the victim regarding why the victim was unable to identify the petitioner until after the fourth time that police detectives presented the witness with a photo ID.

Did you raise GROUND ONE in the California Supreme Court?

☒ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition): PETITION FOR REVIEW

(2) Case number or citation: S130165

(3) Result (attach a copy of the court's opinion or order if available):
DENIED

Attachment to Question 22(a):

In addition, several comments were made by the bailiff, Janet Silva, the deputy District Attorney and the judge regarding defense counsel's inability to focus on the trial. Ms. Silva remarked that it appeared defense counsel was losing it. The deputy District Attorney remarked, "I'm sorry to wake you." At one point, the judge even asked defense counsel if he had the ability to proceed.

Counsel also failed to inquire as to petitioner's alibi defense. When the investigation of this crime commenced, petitioner informed Detective Mark Lopez that at the time the shooting occurred he was at Palace Indian Gaming Casino in Lemoore, California, nearly a 30 minute drive from where the shooting occurred. Petitioner further informed Detective Lopez that he was wearing white pants, a white shirt, a black vest, a black Texas style hat and yellow crocodile boots, and had a shaved head and an earring in his left ear at the casino. Rather than presenting this information to the security personnel at the casino, the Visalia Police provided a photograph of petitioner wearing a baseball cap to the security officers at the casino. All of this evidence was lost or destroyed because Visalia Police Detective Grimes gave Mr. Miller a member of the casino's security personnel a photograph of petitioner wearing a baseball cap rather than describe petitioner's actual outfit while at the casino, and asked Miller to search the security tapes for somebody looking like petitioner in the photograph. When the tape failed to contain an image of petitioner in a baseball cap rather than the outfit petitioner described, Miller destroyed the tape. Detective Grimes was fully aware of petitioner's description of himself at the casino that night but he failed to accurately describe petitioner to the casino security staff.

Counsel also failed to call percipient witness Edgar Rodriguez, an acquaintance of petitioner. Rodriguez would have testified that he saw the shooting and knew to a certainty that petitioner was not the shooter.

(b) GROUND TWO:

Supporting FACTS:

Did you raise GROUND TWO in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

(c) GROUND THREE:

Supporting FACTS:

Did you raise GROUND THREE in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

(d) GROUND FOUR:

Supporting FACTS:

Did you raise GROUND FOUR in the California Supreme Court?

☐ Yes ☐ No.

If yes, answer the following:

(1) Nature of proceeding (i.e., petition for review, habeas petition):

(2) Case number or citation:

(3) Result (attach a copy of the court's opinion or order if available):

23. Do you have any petition or appeal **now pending** in any court, either state or federal, pertaining to the judgment under attack?
☐ Yes ☒ No

24. If your answer to #23 is "Yes," give the following information:

(a) Name of Court:

(b) Case Number:

(c) Date action filed:

(d) Nature of proceeding:

(e) Name(s) of judges (if known):

(f) Grounds raised:

(g) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

25. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing . . . .

(b) At arraignment and plea . . . .

(c) At trial . . . .

(d) At sentencing . . . .

(e) On appeal . . . . Athena Shudde
1762 Columbia St.
San Diego, CA 92101

(f) In any post-conviction proceeding . Andrew Reed Flier
15821 Ventura Boulevard, Suite 567
Encino, CA 91436

(g) On appeal from any adverse ruling in a post-conviction proceeding:

26. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
☒ Yes ☐ No

27. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
☐ Yes ☒ No

(a) If so, give name and location of court that imposed sentence to be served in the future:

(b) Give date and length of the future sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
Yes No

28. Consent to Magistrate Judge Jurisdiction

In order to insure the just, speedy and inexpensive determination of Section 2254 habeas cases filed in this district, the parties may waive their right to procced before a district judge and consent to magistrate judge jurisdiction. Upon consent of all the parties under 28 U.S.C. § 636(c) to such jurisdiction, the magistrate judge will conduct all proceedings including the entry of final judgment. The parties are free to withhold consent without adverse substantive consequences.

The Court encourages parties to consent to a magistrate judge as it will likely result in an earlier resolution of this matter. If you request that a district judge be designated to decide dispositive matters, a magistrate judge will nevertheless hear and decide all non-dispositive matters and will hear and issue a recommendation to the district judge as to all dispositive matters.

You may consent to have a magistrate judge conduct any and all further proceedings in this case, including the entry of final judgment, by indicating your consent below.

Choose only one of the following:

☒ Plaintiff consents to magistrate judge jurisdiction as set forth above.

OR

☐ Plaintiff requests that a district judge be designated to decide dispositive matters and trial in this case.

29. Date you are mailing (or handing to a correctional officer) this Petition to this court:

December 12, 2007

Wherefore, Petitioner prays that the Court grant Petitioner relief to which he may be entitled in this proceeding.

Andrew Reed Flier

SIGNATURE OF ATTORNEY (IF ANY)

15821 Ventura Boulevard, Suite 567
Encino, CA 91436

I declare under penalty of perjury that the foregoing is true and correct. Executed on

(DATE) SIGNATURE OF PETITIONER

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

2254 1983

FILING FEE PAID Yes ✓ No

IFP MOTION FILED Yes No ✓

COPIES SENT TO Court ProSe

FILED

2007 DEC 13 PM 4:29

CLERK US DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

BY [signature] DEPUTY

I (a) PLAINTIFFS

Ramon Navarro Lupercio

DEFENDANTS

Gonzalez

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Imperial
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Andrew Reed Flier
15821 Ventura Blvd Suite 567
Encino, CA 91436
818-990-9500

ATTORNEYS (IF KNOWN)

'07 CV 2338 WQH PCL

II. BASIS OF JURISDICTION (PLACE AN x IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX (For Diversity Cases Only) FOR PLAINTIFF AND ONE BOX FOR DEFENDANT

	PT	DEF		PT	DEF
Citizen of This State	☐1	☐1	Incorporated or Principal Place of Business in This State	☐4	☐4
Citizen of Another State	☐2	☐2	Incorporated and Principal Place of Business in Another State	☐5	☐5
Citizen or Subject of a Foreign Country	☐3	☐3	Foreign Nation	☐6	☐6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS – PERSONAL INJURY	TORTS – PERSONAL INJURY	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	☐ 310 Airplane	☐ 362 Personal Injury- Medical Malpractice	☐ 610 Agriculture	☐ 422 Appeal 28 USC 158	☐ 400 State Reappointment
☐ Marine	☐ 315 Airplane Product Liability	☐ 365 Personal Injury - Product Liability	☐ 620 Other Food & Drug	☐ 423 Withdrawal 28 USC 157	☐ 410 Antitrust
☐ Miller Act	☐ 320 Assault, Libel & Slander	☐ 368 Asbestos Personal Injury Product Liability	☐ 625 Drug Related Seizure of Property 21 USC881	**PROPERTY RIGHTS**	☐ 430 Banks and Banking
☐ Negotiable Instrument	☐ 330 Federal Employers' Liability	**PERSONAL PROPERTY**	☐ 630 Liquor Laws	☐ 820 Copyrights	☐ 450 Commerce/ICC Rates/etc.
☐ 150 Recovery of Overpayment &Enforcement of Judgment	☐ 340 Marine	☐ 370 Other Fraud	☐ 640 RR & Truck	☐ 830 Patent	☐ 460 Deportation
☐ 151 Medicare Act	☐ 345 Marine Product Liability	☐ 371 Truth in Lending	☐ 650 Airline Regs	☐ 840 Trademark	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)	☐ 350 Motor Vehicle	☐ 380 Other Personal Property Damage	☐ 660 Occupational Safety/Health	**SOCIAL SECURITY**	☐ 810 Selective Service
☐ 153Recovery of Overpayment of Veterans Benefits	☐ 355 Motor Vehicle Product Liability	☐ 385 Property Damage Product Liability	☐ 690 Other	☐ 861 HIA (13958)	☐ 850 Securities/Commodities Exchange
☐ 160 Stockholders Suits	☐ 360 Other Personal Injury		**LABOR**	☐ 862 Black Lung (923)	☐ 875 Customer Challenge 12 USC
☐ Other Contract			☐ 710Fair Labor Standards Act	☐ 863 DIWC/DIWW (405(g))	☐ 891 Agricultural Acts
☐ 195 Contract Product Liability			720 Labor/Mgmt. Relations	☐ 864 SSID Title XVI	☐ 892 Economic Stabilization Act
REAL PROPERTY	**CIVIL RIGHTS**	**PRISONER PETITIONS**	☐ 730 Labor/Mgmt. Reporting & Disclosure Act	☐ 865 RSI (405(g))	☐ 893 Environmental Matters
☐ 210 Land Condemnation	☐ 441 Voting	☐ 510 Motions to Vacate Sentence Habeas Corpus	☐ 740 Railway Labor Act	**FEDERAL TAX SUITS**	☐ 894 Energy Allocation Act
☐ 220 Foreclosure	☐ 442 Employment	☒ 530 General	☐ 790 Other Labor Litigation	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectmant	☐ 443 Housing/Accommodations	☐ 535 Death Penalty	☐ 791 Empl. Ret. Inc.	☐ 871 IRS - Third Party 26 USC 7609	☐ 900 Appeal of Fee Determination Under Equal Access to Justice
☐ 240 Tort to Land	☐ 444 Welfare	☐ 540 Mandamus & Other	☐ Security Act		☐ 950 Constitutionality of State
☐ 245 Tort Product Liability	☐ 440 Other Civil Rights	☐ 550 Civil Rights			☐ 890 Other Statutory Actions
☐ 290 All Other Real Property					

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appelate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND $ Check YES only if demanded in complaint: JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE December 13, 2007 ~~SIGNATURE OF ATTORNEY OF RECORD~~ [signature]

PAID $5 12/13/07 BH KCP0A14SS15

UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

# 145515 - BH

December 13, 2007
16:31:23

Habeas Corpus
USAO #.: 07CV2338
Judge..: WILLIAM Q HAYES
Amount.: $5.00 CA

Total-> $5.00

FROM: HABEAS FILING
LUPERCIO V. GONZALEZ